1992

Ronald M.Smith v. Utah : Brief of Petitioner

Utah Court of Appeals

Alan L. Sullivan; Ronald G. Moffit; Attorneys for Respondent; Jan Graham; Attorney General; Kelly Wright; Assistant Attorney General; Attorney for Respondent.
Bill Thomas Peters; Special Deputy County Attorney; Parsons, Davies, Kinghorn & Peters; Karl Hendrickson; Deputy Salt Lake County Attorney; Attorneys for Petitioners.

KATHLEEN C. HOWELL, Cache County Assessor,

Petitioner,

-vs-

COUNTY BOARD OF EQUALIZATION OF CACHE COUNTY, STATE OF UTAH, et al.,

Respondents.

RONALD M. SMITH, Utah County Assessor,

Petitioner,

-vs-

COUNTY BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, et al.,

Respondents.

ROBERT L. YATES, SALT LAKE COUNTY ASSESSOR,

Petitioner,

-vs-

COUNTY BOARD OF EQUALIZATION OF UTAH COUNTY, STATE OF UTAH, et al.,

Respondent.

Supreme Court Consolidated Appeal No. 920604

Priority No. 15

BRIEF OF PETITIONERS

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CONSTITUTIONAL PROVISION

Utah Constitution, Article XIII, Section 2:

> (1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.
>
> (2) The following are property tax exemptions:
>
> (a) The property of the state, school districts, and public libraries;
>
> (b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographical boundaries as defined by law may be subject to the ad valorem property tax;
>
> (c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;
>
> (d) Places of burial not held or used for private or corporate benefit; and
>
> (e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

STATEMENT REGARDING FACTS ASSERTED BY RESPONDENTS

The Statements of Fact set forth in the Brief of Respondent, Utah State Tax Commission and Respondent, IHC Hospitals, Inc., are inaccurate, misleading, reference matters not of record in these proceedings and substitute argument for facts.

(A) Statement of Facts, Utah State Tax Commission.

While it is true that "three of the four county assessors filed an appeal with this Court, claiming that the charitable exemption standards adopted by the Tax Commission were unconstitutional," the Assessors' challenge is not limited strictly to the issue of the constitutionality of the standards. The County Assessors have also asserted that the IHC hospitals which are the subjects of this appeal, are not operated exclusively for charitable purposes. They operate as aggressive business enterprises achieving financial results which would be the envy of many profit making entities.

The financial data included in the record and set forth in Appellants' opening brief clearly demonstrates this fact.

Appellants further object to footnote 5, page 6, of the Tax Commission's brief and the Karl Snow letter in Appendix 2. Those matters are not a part of the record in these proceedings. As a matter of interest, since IHC Hospitals, Inc.'s brief, at page 6, makes a similar reference, not a part of the record, it should be emphasized that when the people of the state of Utah were asked to approve "hospital" as an exempt category after this Court's landmark decision in Utah County v. Intermountain Health Care,

Inc., 709 P.2d 265 (Utah 1985), they rejected the proposal thereby showing their approval of this Court's decision. The Karl Snow letter is therefore irrelevant as well.

The Tax Commission's assertion on page 2 of its brief is also not accurate.

The Appellant assessors do not agree that IHC hospitals qualify as charitable institutions when viewed in light of the Tax Commission's standards, rather the Assessors agree only that the IHC Hospitals meet the Tax Commission standards but do not agree that the Tax Commission standards are consistent with this Court's decision in Utah County, nor do the Assessors agree that IHC Hospitals are operated as charitable institutions.

(B) Statement of Facts, IHC Hospitals, Inc.

Appellant Assessors most strenuously disagree with IHC's assertion that there are omissions of central facts and unsupported factual allegations. To the contrary, the Assessors' brief contains factual references which were not disputed by IHC Hospitals, Inc., all of which are properly referenced and contained in the record. IHC may not like the facts as set forth in Appellant's brief but Appellants, unlike IHC Hospitals, Inc., have not introduced matters outside the record such as the reference to the results of the 1986 vote to amend the Utah Constitution to extend the exemption to include "hospitals" which was rejected by the electorate.

On page 18 of its brief, IHC Hospitals, Inc., states as a factual assertion that each off-site facility was necessitated by

either the needs of patients or the desirability of achieving economies of centralization. No part of the record is referenced to support this assertion. To the contrary, IHC Hospitals, Inc.'s own Board Minutes on the subject state as follows:

> "The purposes of opening a second InstaCare are to: (1) Protect CHMC's[1] inpatient and emergency services Market Share; 2) Expand the referral base to CHMC physicians; 3) Strengthen IHC and CHMC on the west side to further discourage Humana; and 4) Generate revenue to CHMC. (Emphasis supplied.) See Petitioner's opening brief, Appendix D.

IHC Hospitals, Inc., confuses facts with arguments. In its brief it argues as fact that this Court "nullified statutes that had previously governed property tax exemptions for non-profit hospitals and substituted, in their place, a series of "guidelines" adapted from the Minnesota courts." Arguing further that: "The Utah County guidelines were borrowed from North Star Research Institute v. County of Hennepin, 236 N.W.2nd 754, 757 (Minn. 1975)" and that " . . . Minnesota has never applied the guidelines to non-profit hospitals." See IHC Brief, page 5.

These assertions, characterized as "facts" in IHC Hospitals, Inc.,'s brief are not based upon any facts that are of record. They are nothing more than argument which ignores the scholarly and reasoned analysis undertaken by this Court in Utah County, which landmark decision has been widely reviewed, analyzed and cited in the area of property tax exemptions.

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[1] The reference to CHMC is the IHC Hospitals, Inc.'s Cottonwood Hospital Medical Center.

SUMMARY OF ARGUMENT

The Appellant County Assessors have standing to appeal decisions of the County Board of Equalization as well as decisions of the Tax Commission of Utah. Respondents' reliance on case law from other states is in error, given the body of case law that this Court has developed over the years in addressing property tax exemptions. Respondents' reliance upon R. Milton Yorgason v. County Board of Equalization of Salt Lake County, ex rel., Episcopal Management Corporation, 714 P.2d 653 (Utah 1986), to support the Tax Commission standards is also in error.

POINT I

THE ASSESSORS HAVE STANDING TO BRING THIS APPEAL.

IHC Hospitals, Inc., makes the unsupported assertion that this Court has never addressed the question of whether a county assessor may challenge a property tax exemption where both the County Board of Equalization and the Tax Commission have squarely upheld the exemption. Contrary to that unsupported assertion, this Court has already resolved the issue and has determined the Assessor to have such standing. In Baker v. Tax Commission, 520 P.2d 203 (Utah 1974) the County Assessor appealed the decision of the Utah State Tax Commission denying his motion to dismiss appeals from the County Board of Equalization, asserting that the County Board and the Tax Commission did not have the authority to exempt property under Article XIII § 2 of the Constitution of Utah.

The assessors' challenge was to both the authority of the County Board and the Utah State Tax Commission to grant exemptions.

On appeal, the Utah Supreme Court determined that both bodies had the authority to determine the taxable status of properties for which exemption was claimed. However, in so ruling, the Supreme Court observed as follows:

> "The Commission thus has the power to correct or change the orders of the Board, and it may make such an order as it deems proper. If it errs in making the order, then, of course, the assessor or any aggrieved person may have the court review the error." (Emphasis supplied.) 520 P.2d 206.

Additional cases brought before this Court by an assessor include Baker v. One Piece of Improved Real Property, 570 P.2d 1023 (Utah 1997); R. Milton Yorgason v. County Board of Equalization of Salt Lake County, ex rel., Episcopal Management Corporation, 714 P.2d 653 (Utah 1986).

Respondent IHC Hospitals, Inc.'s, argument ignores the decisions of this Court and is without merit.

POINT II

RESPONDENTS RELIANCE ON CASE LAW FROM OTHER STATES AND YORGASON V. COUNTY BOARD OF EQUALIZATION TO SUPPORT THE STANDARDS FOR EXEMPTION DEVELOPED BY THE TAX COMMISSION AND THE EXEMPTION OF THESE HOSPITALS IS IN ERROR

Respondents cite a voluminous list of cases from other jurisdictions to support their claim that the hospitals under appeal and the Tax Commission Standards under which they were exempted meet the requirements of Utah Const. Art. XIII, § 2. Petitioner County Assessors agree that these hospitals and the Tax Commission Standards might well pass constitutional muster in other

jurisdictions. In fact, many states require nothing more than existence as a non-profit hospital to qualify for exemption (a proposition specifically rejected not only by this Court but also the voters of Utah).

The County Assessors believe the real issue to be not what the courts of other jurisdictions would hold under the facts of these appeals but what this Court's holdings dictate. Utah has a long tradition of strict construction with respect to property tax exemptions. The presumption is against exemption and in favor of taxation. Parker v. Quinn, 64 P.961 (Utah 1901). None of Utah's property tax exemption cases support exemption of commercial facilities such as these hospitals. Fraternal organizations which engaged predominantly in providing reimbursed food, beverage, and entertainment were denied exemption. Loyal Order of Moose No. 259 v. County Board, 657 P.2d 257 (Utah 1982) Residential facilities which provided shelter for those able to pay at commercial rates were denied exemption. Friendship Manor Corp. v. Tax Commission, 487 P.2d 1272 (Utah 1971). Nothing in Utah's long line of exemption cases supports either the Standards adopted by the Tax Commission or the exemption of these hospitals.

Respondents cite as supportive of their position that these facilities may engage in predominantly commercial activities and still retain eligibility for tax exemption, this Court's decision in Yorgason v. County Board of Equalization, 714 P.2d 653 (Utah 1986). The Assessors believe a careful analysis of Yorgason involved a housing project exclusively available to and occupied by

low-income residents. The project was supported by a combination of below market rents, federal subsidies (governmental donations), and private donations. There was, in effect, a lack of material reciprocity in the relationship with the tenants supported by donations to ensure the project's viability. The hospitals, on the other hand, provide charity to only a nominal portion of the total users--not the total patient base. The limited charitable activity is supported, not by donations as in Yorgason, but by the deliberate shifting of costs to all other paying patients and/or their insurers (including local, state, and federal governments). A more appropriate analogy for the operating scenarios presented by the hospitals is found in this Court's decision in Loyal Order of Moose, supra. In that case a fraternal organization operated a restaurant and club. The beverages and meals were provided to members at a cost sufficient to provide some (albeit limited) excess revenue. This excess revenue was then used to fund charitable activities. The limited nature of the charitable activity (which as a percentage of gross revenues exceeded that provided by the subject hospitals) was deemed insufficient by the court to allow tax exemption. The court should reach the same decision in the present case. To provide services with the full expectation of covering the expense from a pool of involuntary contributors, (the ill with either insurance or assets) is hardly charitable.

CONCLUSION

County Assessors have standing to challenge decisions of County Boards of Equalization as well as decisions of the Utah State Tax Commission. The standards adopted by the Utah State Tax Commission extend exemptions to non-profit hospitals which do not meet the guidelines set out by this Court in Utah County.

The manner in which the hospitals operate and their financial history demonstrate a predominance of commercial activity.

The decision of the Tax Commission to exempt the hospitals involved in these appeals should be reversed.

RESPECTFULLY SUBMITTED this 1st day of November, 1993.

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BY _____
BILL THOMAS PETERS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of the foregoing REPLY BRIEF were mailed, postage prepaid, to the following this 15th day of November, 1993.

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